

REMARKS

Claims 1-21 and 23-44 are now pending in the application, of which Claims 13-15 and 39 have been withdrawn from consideration. Claims 1-12, 16-21, 23-38, and 40-44 stand rejected. Claim 3 has been cancelled herein, and Claims 1, 9, 11, 16, 20, 32 and 36 have been amended. Support for the amendments can be found throughout the application, drawings and claims as originally filed and, as such, no new matter has been presented. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

EXAMINER INTERVIEW

The Examiner is thanked for the courtesies extended during the telephone conference. Amendments to the claims which include structural limitations were discussed. Also discussed was the Kohrs reference and the use of a setting tool as a fixation member. While no agreement was reached, the Examiner agreed to a pre-Office Action telephone conference.

REJECTION UNDER 35 U.S.C. § 112

Claims 11, 12, 21, 25, and 26 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement, specifically regarding a/the “slot.” Applicants have amended the claims to clarify that the contoured exterior surface is a threaded surface defining an arcuate groove. The claims have also been amended to clarify that the channels are longitudinal channels which are distinct from the groove formed by the thread.

REJECTION UNDER 35 U.S.C. § 101

Claims 11 and 12 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. While Applicants traverse the rejection inasmuch as it is believed the human body is not claimed, Applicants believe the aforementioned amendments overcome the rejection.

REJECTION UNDER 35 U.S.C. § 102

Claims 1-8, 16-19, 36-38, and 40-44 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kohrs (U.S. Pat. No. 6,224,631). This rejection is respectfully traversed.

The Examiner's attention is directed to Claim 1 which has been amended to include the limitation that the fastener is configured to fixably engage graft material. Claim 1 has further been amended to include the limitation that one of the implant or fastener defines a graft engaging surface having graft engaging members. Applicants respectfully assert that the Kohrs reference does not teach this limitation.

Claim 16 has been amended to clarify that the contoured surface is a threaded surface which defines an arcuate groove. Further, Claim 16 has been amended to clarify that the staple interrupts the arcuate groove so as to prevent rotation of the implant. Applicants note that the bone support matrix (40) of Kohrs has a bone support matrix (40) with helical threads (43) which are complimentary to portions of the helical threads 7a of the implant (10). While a non-threaded support matrix is contemplated, Kohrs is silent as to a component relationship with prevents rotation of the implant (see Kohrs: column 7, lines 8-24).

Applicants further note that Claim 16 contains the limitation that the implant and the staple define a soft tissue accepting aperture therebetween. Applicants assert that Kohrs simply does not define a soft tissue accepting aperture between the implant and the staple. As such, Kohrs does not teach every limitation Claim 16 or its dependents.

Claim 36 has been amended to include the limitation that the fastener is disposed within a channel so as to interrupt the arcuate groove defined by a thread on an exterior surface of the implant. This disposition prevents rotation of the implant with respect to the aperture. As described above, Applicants assert that Kohrs is silent to this limitation.

Claims 9-12, 20, 21, 23-29, and 32-35 are rejected as being anticipated by Greenfield (U.S. Pat. No. 5,584,835). This rejection is respectfully traversed.

The Examiner's attention is directed to independent Claim 9 which has been amended to clarify that the channel is a longitudinal channel defined in an exterior threaded surface of the implant. The staple is at least partially disposed within the longitudinal channel of the exterior surface. An upward locking surface of the staple is configured to engage with an anchor locking surface within the implant. Applicants respectfully assert neither Greenfield nor Kohrs teach this limitation.

Claim 20 has been amended to clarify that the contoured surface is a threaded surface which defines an arcuate groove. Further, Claim 20 has been amended to include the limitation that the staple intersects the groove so as to prevent rotation of the implant. Applicants note that the fastener structure of Greenfield is an interior fastener, it is not capable or configured to prevent the rotation of the implant. As such, Applicants

respectfully assert that Greenfield does not teach each of the limitations of Claim 20 or its dependents.

Similarly, Claim 32 has been amended to clarify that the contoured exterior surface of the implant defines an arcuate groove and the staple bindingly intersects the groove so as to resist rotation of the implant. As the Greenfield reference does not teach this limitation, Applicants respectfully assert that the rejection of Claim 32 and its dependents has been overcome.

REJECTION UNDER 35 U.S.C. § 103

Claims 30 and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Greenfield. Applicants note that Claims 30 and 31 depend on independent Claim 20. For at least the reasons described above, Applicants submit that the Greenfield does not teach each of the limitations as claimed. As such, rejection under 35 U.S.C. § 103 is improper.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: March 26, 2007

By: Richard W. Warner
Richard W. Warner, Reg. No. 38,043
Christopher A. Eusebi, Reg. No. 44,672

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600

RWAR/CAE/lf-s/smb